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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140416344-4344-01]

RIN 0648-BE18

Emergency Rule to Revise the Recreational Accountability Measures
and Revise the 2014 Recreational Fishing Season for Red Snapper in
the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic
and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to revise the recreational
accountability measures (AMs) by establishing a recreational annual
catch target (ACT), and revise the 2014 recreational fishing season
for red snapper in the exclusive economic zone (EEZ) of the Gulf of
Mexico (Gulf), as requested by the Gulf of Mexico Fishery Management
Council (Council). At its April 2014 meeting, the Council requested
an emergency rule to revise the recreational AMs for red snapper by
applying a 20-percent buffer to the recreational quota, which results
in a recreational ACT of 4.312 million lb (1.956 million kg), round
weight. The Council's decision to request an emergency rule was made
following the decision of the U.S. District Court for the District

of Columbia (Court) in Guindon v. Pritzker, 2014 WL 1274076 (D.D.C. Mar. 26, 2014). After recalculating the season length based on the ACT and using the 2013 Marine Recreational Information Program (MRIP) landings estimates, NMFS is setting a 9-day fishing season. The purpose of this rulemaking is to better ensure red snapper recreational landings do not exceed the recreational quota established in the rebuilding plan, in accordance with sections 303(a)(15) and 407(d) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(15); 16 U.S.C. 1883(d)) and the Court's ruling.

DATES: This emergency rule is effective [insert date of publication in the FEDERAL REGISTER], through November 11, 2014. The red snapper recreational fishing season will open at 12:01 a.m., local time, on June 1, 2014, and close at 12:01 a.m., local time, on June 10, 2014.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which include an environmental assessment (EA), may be obtained from the Southeast Regional Office Web site at <http://sero.nfms.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: Cynthia.Meyer@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is

implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The 2007 reauthorization of the Magnuson-Stevens Act established new requirements to end and prevent overfishing through the use of annual catch limits (ACLs) and AMs. For red snapper, NMFS determined the existing commercial and recreational quotas are functionally equivalent to sector ACLs, and the sum of the quotas is functionally equivalent to the stock ACL. Additionally, the commercial individual fishing quota (IFQ) program serves as an AM for the commercial sector and the recreational in-season closure based on annual projections of the season length serves as an AM for the recreational sector.

The current recreational quota, implemented through a 2013 framework amendment (78 FR 57318, September 18, 2013), is 5.390 million lb (2.445 million kg), round weight. The red snapper recreational fishing season begins on June 1, each year, and closes when NMFS projects the recreational quota will be met. NMFS determines the length of the red snapper recreational fishing season in advance and announces the closure date in the Federal Register

before June 1, each year.

From 2010 to present, the season has become progressively shorter despite annual increases in the quota. In 2011, the season was 48 days, and in 2012, 46 days. In 2013, the season was open for a total of 42 days. It opened on June 1 for 28 days (78 FR 34586, June 10, 2013), and then re-opened on October 1 for an additional 14 days (78 FR 57313, September 18, 2013). For the 2014 recreational fishing season, NMFS published a temporary rule on December 19, 2013, to implement a 40-day season beginning June 1, 2014 (78 FR 76758).

Guindon v. Pritzker

In September 2013, individual commercial fishermen and two commercial fishing interest groups filed a lawsuit challenging the rules that implemented the red snapper quotas for the 2013 fishing year and set the 2013 recreational red snapper fishing season. In March 2014, the Court ruled in favor of the plaintiffs, finding, in pertinent part, that NMFS failed to require adequate AMs for the recreational sector, failed to prohibit the retention of fish after the recreational quota had been harvested, and failed to use the best scientific information available when determining whether there should be a fall fishing season. See Guindon v. Pritzker, 2014 WL 1274076 (D.D.C. Mar. 26, 2014).

2014 Recreational Red Snapper Fishing Season

For the 2014 recreational red snapper fishing season, this rule

reduces the probability that the recreational sector will exceed its quota by revising the projected season length for the 2014 fishing season to incorporate the 2013 MRIP landings data. Additionally, based on the Council's request, NMFS is implementing additional recreational AMs for red snapper to better constrain harvest to the recreational quota. The Council voted to apply a 20-percent buffer to the recreational quota, resulting in a recreational ACT of 4.312 million lb (1.956 million kg), round weight. NMFS is using the ACT to set the 2014 recreational fishing season. Based on the estimated landings data from the 2013 fishing season (from MRIP, the Southeast Headboat Survey, and the Texas Parks and Wildlife Department (TPWD)), average fish size, the length of the 2014 recreational fishing seasons in state waters off each Gulf state, and estimated catch rates in state waters, NMFS has determined the 2014 Federal recreational fishing season needs to be reduced from 40 to 15 days. The Federal season is further reduced to 9 days when it is based on the recreational ACT. The reduction in the Federal fishing season length (15 to 9 days) is not proportional to the buffer applied (20 percent) because NMFS needs to account for the landings that will continue to occur from state waters when Federal waters are closed. Therefore, the recreational fishing season will open at 12:01 a.m., local time, on June 1, 2014, and close at 12:01 a.m., local time, on June 10, 2014. The method for calculating the closure date can

be found in Appendix B of the EA.

The Council is currently considering permanent measures to revise the recreational AMs for red snapper in Amendment 28 to the FMP. The actions in Amendment 28 consider establishing an ACT and using paybacks to address any quota overages that may occur. The Council may also consider other long-term measures to address accountability in the recreational sector. For example, the Council has started work on a scoping document to develop a red snapper IFQ-type program for for-hire vessels.

Need for This Emergency Rule

The "Policy Guidelines for the Use of Emergency Rules" (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists.

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

NMFS is promulgating these emergency regulations under the authority of the Magnuson-Stevens Act, consistent with these three

criteria. For the first criterion for an emergency rule, the recent unforeseen event is the decision in Guindon v. Pritzker, which was issued on March 26, 2014. In that decision, the Court found, in pertinent part, that NMFS failed to require adequate recreational AMs and to prohibit the retention of fish after the recreational quota had been harvested, and failed to use the best scientific information available by not using the 2013 MRIP landings data to determine whether the harvest during the June 2013 fishing season exceeded the recreational quota. Therefore, based on the Council's request, NMFS is implementing additional recreational AMs for red snapper to better constrain harvest to the recreational quota during the 2014 fishing season, which opens on June 1, 2014. In addition, NMFS is including the 2013 MRIP landings data in the projections used to set the 2014 fishing season.

The second emergency criterion is that the situation presents serious conservation or management problems in the fishery. The 2014 recreational fishing season was previously projected to be 40 days. This presents serious conservation and management problems because the 40-day season could perpetuate continued overages of the recreational quota. This emergency rule is expected to help NMFS constrain recreational red snapper harvest within the quota, as required by sections 303(a)(15) and 407(d) of the Magnuson-Stevens Act (16 U.S.C. 1853(a)(15); 16 U.S.C. 1883(d)). Section 303(a)(15)

requires that the councils establish ACLs for each stock and AMs to ensure these catch limits are not exceeded, and section 407(d) requires a separate quota for the recreational sector that, when reached, results in a prohibition on the retention of fish caught during recreational fishing. The recreational ACT and the in-season closure serve as the recreational AMs for red snapper. The in-season closure also results in a prohibition on the retention of fish caught during recreational fishing.

Under the third criterion for an emergency rule, the immediate benefit of implementing the emergency rule must outweigh the value of advance notice and public comment. NMFS previously announced the Federal red snapper recreational fishing season would be 40 days. However, the need to incorporate the 2013 MRIP landings data into the season length projections and to establish additional AMs to ensure that the recreational harvest is constrained to the recreational quota has resulted in a 9-day Federal fishing season. The Federal red snapper recreational fishing season opens June 1, 2014. Delaying announcement of this emergency rule to accommodate prior public notice and comment would result in less advance notice of the revised Federal red snapper recreational fishing season and could be very disruptive to the fishery. Such a delay would decrease the time available for for-hire businesses to adjust their business plans and private anglers to change their fishing plans, especially

if they are visiting from out-of-state. For-hire operators booked trips with clients for the previously announced 40-day season and private anglers may have booked hotel rooms or rented boats in anticipation of a 40-day season. Because the season implemented through this emergency rule is now 9 days, for-hire operators will need to change their business plans and cancel or re-arrange many of those trips, and clients who booked the for-hire trips and private anglers may need to cancel reservations or reschedule their trips. NMFS must implement this rule immediately to announce the change in the fishing season.

Measures Contained in this Emergency Rule

This emergency rule revises the recreational AM by establishing a recreational ACT, and revises the 2014 recreational fishing season for red snapper in the Gulf EEZ. NMFS has determined the length of the red snapper recreational fishing season in Federal waters to be 9 days, which is based on when the recreational ACT of 4.312 million lb (1.956 million kg), round weight, is projected to be met. Therefore, the Federal recreational fishing season will open at 12:01 a.m., local time, on June 1, 2014, and close at 12:01 a.m., local time, on July 10, 2014. On and after the effective date of the recreational closure notification, the bag and possession limit for red snapper are zero. In addition, if Federal regulations for Gulf reef fish are more restrictive than state regulations, a person

aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested, as specified in § 622.4(a)(1)(iv). Relative to this emergency rule, that means if the EEZ is closed to recreational red snapper harvest, vessels with a Federal charter vessel/headboat permit for Gulf reef fish may not harvest red snapper in state waters.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary for the conservation and management of the recreational red snapper component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B).

Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Many of those affected by the red snapper recreational fishing season closure have

planned their trips several months in advance. For-hire operators booked trips with clients for the previously announced 40-day season and private anglers may have booked hotel rooms or rented boats in anticipation of a 40-day season. Because the season implemented through this emergency rule has eliminated 31 fishing days, for-hire operators will need to change their business plans and cancel or re-arrange trips that are scheduled to occur after June 9, 2014, and clients who booked the for-hire trips and private anglers may need to cancel reservations or reschedule their trips for a date when the season is open. Delaying announcement of this emergency rule to accommodate prior public notice and comment would be contrary to the public interest because it would result in less advance notice to the public of the change in the length of the red snapper recreational fishing season.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Red snapper.

Dated: May 13, 2014.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.41, paragraph (q) is added to read as follows:
§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) Red snapper--(1) Commercial sector. [Reserved]

(2) Recreational sector. (i) The AA will determine the length of the red snapper recreational fishing season based on when recreational landings are projected to reach the recreational ACT specified in paragraph (q) (2) (ii) of this section, and announce the closure date in the Federal Register. This will serve as an in-season accountability measure. On and after the effective date of the recreational closure notification, the bag and possession limit for red snapper are zero.

(ii) The recreational ACT for red snapper is 4.312 million lb (1.956 million kg), round weight.

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